

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION

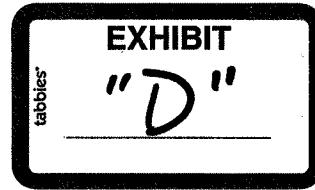
ALLEN DOUGLAS HALE, III,  
Plaintiff,

**VERSUS** CIVIL ACTION NO: 1:16-cv-113-LG-RHW

CITY OF BILOXI, MISSISSIPPI;  
KENNETH GARNER, Individually;  
DARREN LEA, Individually; and  
JOHN AND JANE DOES 2-10,  
Individually,  
Defendants.

**DEPOSITION OF DARREN LEA**

Taken at Biloxi Public Safety Building,  
170 Porter Avenue, Biloxi, Mississippi,  
on Wednesday, November 2, 2016, beginning at  
9:15 a.m.



1 Q. Were you employed as an officer in any  
2 capacity before Biloxi?

3 A. Yes.

4 Q. And who was that with?

5 A. With the United States Coast Guard.

6 Q. And when were you serving with the Coast  
7 Guard?

8 A. I've been serving with the Coast Guard  
9 since August 31st, 1987, until present.

10 Q. Okay. So you're still with the Coast  
11 Guard, as well?

12 A. Yes.

13 Q. In what capacity is that?

14 A. I'm a special agent with the Coast Guard  
15 investigator service.

16 Q. And other than the Biloxi Police  
17 Department, have you ever worked for any law  
18 enforcement agency, local law enforcement agency?

19 A. No.

20 Q. What type of training did you receive  
21 before you became employed with the City of  
22 Biloxi?

23 A. Law enforcement training with the Coast  
24 Guard, just basically general law enforcement  
25 training, instructor for use of force, instructor

1           first I've learned of that, so can you kind of  
2           give me just a brief background on the type of  
3           courses that you taught?

4           A.    Just use of hand-to-hand type of -- I  
5           lost my train of thought there -- physical,  
6           defensive tactics type stuff, use of impact  
7           weapon, pepper spray or chemical weapons. And I  
8           was not a firearms instructor, but I did train on  
9           firearms, the use of deadly force as far as the  
10           practicality of it, or when and when not to use  
11           it. I was also a judgemental pistol instructor.

12           Q.    A judgemental pistol instructor?

13           A.    Yes.

14           Q.    What exactly is that?

15           A.    Officers or Coast Guardsmen at the time  
16           would watch a video, and the video was somewhat  
17           interactive. And you had to make the proper  
18           choices on when to shoot and when not to shoot,  
19           and I administered those courses.

20           Q.    Did they have tasers available back in  
21           '97?

22           A.    No.

23           Q.    To the best of your recollection, when  
24           did Biloxi Police Department issues tasers to its  
25           officers?

1           A. Roughly five years ago. I don't have  
2 the exact date on that.

3           Q. So approximately 2010-ish or '11?

4           A. Yes.

5           Q. And do you recall what you had to do to  
6 be able to carry a taser when you were on duty?

7           A. I had to go through classroom training  
8 on it, talked about the nomenclature, proper uses  
9 of it, the physiological effects, the dangers, and  
10 then completed a practical where we actually fired  
11 the taser into a cardboard silhouette with  
12 specific target areas; and then we also had to be  
13 subjected to the taser so we would know what it  
14 feels like.

15           Q. And what does it feel like?

16           A. Feels like somebody hitting you in the  
17 back with a ball pein hammer a thousand times in  
18 three seconds.

19           Q. You know, do you lose all motor  
20 function?

21           A. I didn't.

22           Q. Is that the purported goal in using a  
23 taser, is to basically have a suspect to where  
24 he's not able to, you know, physically move,  
25 basically?

1 MR. GUNN: Object to the form.

2 BY MR. HOLDER:

3 Q. I'll rephrase that. Let me ask you this  
4 first. How many times have you deployed your  
5 taser?

6 A. I'm pretty sure it's three times, at  
7 least when I've discharged it.

8 Q. And specifically I'm referring to  
9 discharging at a suspect. So three times?

10 A. Yes.

11 Q. Do you recall -- obviously in the  
12 instant case was one -- when the other two  
13 incidents were?

14 A. The one prior to this one was probably a  
15 month before, and then the other one was several  
16 years ago.

17 Q. So they were both prior to this  
18 incident?

19 A. Yes.

20 Q. And you haven't deployed your taser at a  
21 suspect since April 1st, 2015?

22 A. No.

23 Q. What all positions have you held with  
24 the Biloxi Police Department?

25 A. Patrolman, went up through the ranks all

1 and purposes, the taser is on at that point in  
2 time?

3 A. And the camera.

4 Q. And it takes a little time to warm up?

5 A. No.

6 Q. No? So as soon as you pull the trigger,  
7 it will discharge the taser bars?

8 A. I'm not sure I understand. As soon as  
9 you turn the taser on, the camera comes on, and  
10 then you have to physically pull the trigger for  
11 the trigger -- for it to discharge.

12 Q. Okay. And when does the camera stop  
13 recording? Is it when you turn the taser off?

14 A. I'm not 100 percent on that, but that  
15 would be my thought.

16 Q. Have you ever viewed the taser videos of  
17 your previous?

18 A. Yes.

19 Q. Okay. And, you know, were those about  
20 the same length as the one here, or do you recall?

21 A. No.

22 Q. How did you first come to learn of the  
23 arrest warrant for Mr. Hale?

24 A. Dispatch said that we had some  
25 information about Mr. Hale being up at this

1 trailer park -- or this RV park. All of my north  
2 units were very busy at the time, so we didn't  
3 have anybody to go over there to follow up with  
4 it. I was on another call, another felony call;  
5 and about the time that cleared up, I started  
6 heading up that direction. If I ain't mistaken,  
7 Sergeant Garner was also en route, and one of our  
8 captains was heading that way.

9 As soon as I said I was heading that  
10 way, the captain dropped off. And then as I was  
11 coming from this side of town to the north side of  
12 town, one of the units from the north -- that  
13 would have been Officer McKeithen -- he also  
14 joined up with us.

15 Q. Did y'all meet somewhere prior to going  
16 to the RV park?

17 A. Yes, we met at the commercial tire shop  
18 right there at Interstate 10 and Shriners  
19 Boulevard. Sergeant Garner had his mobile data  
20 terminal there. We looked at a photograph of  
21 Mr. Hale, and we had some preplanning-type issues  
22 that we wanted to go over. And we kind of had the  
23 inkling that the initial address that the  
24 dispatcher had given us was not going to be the  
25 right address. Sergeant Garner believed that that

1                    "L" to represent himself.

2 BY MR. HOLDER:

3                    Q. From what direction did y'all approach?

4                    Would that be the front door of the trailer?

5                    A. I think so. That looks like the RV.

6                    Q. RV. And from what direction did y'all  
7 approach the RV?

8                    A. Draw it on there?

9                    Q. Yeah, you can draw it.

10                   MR. GUNN: Draw where the cars are?

11 BY MR. HOLDER:

12                   Q. You can just do a dotted line or  
13 something, if you want to, or a line with an  
14 arrow.

15                   A. I'm not sure where McKeithen was. It's  
16 not to scale. And that's Garner, and we  
17 approached this way.

18                   Q. And when is the first time that you made  
19 contact with Mr. Hale? And when I say "contact,"  
20 the first time you made a visual observation.

21                   A. From right here at the front of this  
22 car, I could see him sitting here. I'd looked  
23 through the front window, and I could see him  
24 sitting there; and that was the same person I saw  
25 in the picture that I had just looked at.

1 MR. HOLDER: Correct.

2 A. I think Sergeant Garner did.

3 BY MR. HOLDER:

4 Q. I believe you had mentioned earlier that  
5 previous to this incident that night, that you  
6 were serving another felony warrant; is that  
7 right?

8 A. Yes -- not a warrant. It was a felony  
9 arrest.

10 Q. Do you recall what that was for?

11 A. Narcotics.

12 Q. Did y'all effectuate the arrest?

13 A. Yes.

14 Q. Did the suspect in that case try to run  
15 or anything like that?

16 A. No.

17 Q. Was there any use of force in that case?

18 A. No.

19 Q. I'm going to hand you what's marked as  
20 Exhibit 4. It's policies and procedures on arrest  
21 procedures.

22 MR. CLARK: Can we get a copy of what  
23 he's marked up?

24 MR. GUNN: Yeah, it's going to be  
25 attached.

1 Q. Did anybody have the warrant with them?

2 A. No.

3 Q. In Paragraph 3, can you read that for  
4 me?

5 A. Verbally advise suspect they are under  
6 arrest so a reasonable suspect will know that  
7 they're under arrest and not free to leave.

8 Q. And isn't it true that Mr. Hale was  
9 never notified he was under arrest?

10 MR. GUNN: Object to the form. You can  
11 answer.

12 A. I do not recall if we actually -- if  
13 anybody actually told him he was under arrest; but  
14 it was clear that we wanted him to come to us, but  
15 he would not comply.

16 BY MR. HOLDER:

17 Q. Okay. Did you ever tell him he was  
18 under arrest?

19 A. No.

20 Q. Did you ever tell him that you had a  
21 warrant for his arrest?

22 A. No.

23 Q. Did Garner ever tell him that he had a  
24 warrant for his arrest?

25 A. I don't know.

1 A. Yes.

2 Q. How?

3 A. By his movements, not following task  
4 direction.

5 Q. But he's not informed that he's under  
6 arrest; right?

7 A. No.

8 Q. And he's in his own home?

9 A. Yes.

10 Q. So what lawful order or what authority  
11 did you have to -- for him to be compliant with  
12 anything?

13 MR. GUNN: Object to the form.

14 A. The arrest warrant.

15 BY MR. HOLDER:

16 Q. Which he was not informed of?

17 A. Not necessary.

18 Q. It's not necessary to inform him of that  
19 despite the fact that the procedures tell you  
20 that?

21 A. He would be told that as soon as we got  
22 him in handcuffs, when it was safe for everybody  
23 at the scene.

24 Q. Was there a reason why you didn't just  
25 put him in handcuffs?

1           A. Well, that's what we were attempting to  
2       do.

3           Q. Did he ever curse?

4           A. I don't recall.

5           Q. Did he ever yell at you?

6           MR. GUNN: Object to the form.

7           MR. HOLDER: I don't know how else to  
8       ask that question.

9           A. His voice was raised a little bit.

10          BY MR. HOLDER:

11          Q. Was this before or after he got shot?

12          A. Before.

13          Q. Would you agree that the minimum force  
14       necessary is required when effectuating an arrest?

15          A. Yes.

16          Q. At one point in time, I think you said  
17       that you had your firearm drawn; is that right?

18          A. Yes.

19          Q. Do you remember when you holstered your  
20       firearm?

21          A. Mr. Hale made a very sudden movement  
22       with his hands out of our sight -- out of my  
23       sight, anyway, and when he came back, he had a  
24       cigarette -- he had a pack of cigarettes. I had  
25       my gun pointed at him, prepared to use deadly

1 force if necessary. It was not a weapon. I think  
2 Sergeant Garner said something to the effect, hey,  
3 that's how people get shot. He said, I'm just  
4 getting my cigarettes.

5 And then I transitioned to my taser. I  
6 holstered my gun, got my taser out, and told him,  
7 if you do that again, I'm going to tase you.

8 Q. Okay. So you holstered your weapon  
9 because you didn't fear that you were in danger of  
10 serious bodily harm?

11 MR. GUNN: Object to the form.

12 A. No. I wanted a secondary option based  
13 on the fluidity of the circumstance.

14 BY MR. HOLDER:

15 Q. Is there any reason why you just didn't  
16 tase him then?

17 A. As soon as I pulled my taser out, it  
18 pretty much happened. It was very quick. I  
19 didn't have a taser out initially.

20 Q. Did either one of y'all -- for  
21 clarification, Officer Garner or yourself or  
22 Officer McKeithen -- when y'all instructed  
23 Mr. Hale to come outside, tell him why you wanted  
24 him to come outside?

25 A. I don't think. I don't recall

1 specifically, no.

2 Q. Is there any indication that y'all just  
3 wanted to talk to him or had some questions?

4 A. Yes.

5 Q. Y'all said, we have some questions for  
6 you?

7 A. No.

8 Q. Okay. And I believe I've asked this,  
9 but I'm going to ask it again, so sorry for the  
10 redundancy if I have. Did you or Garner or  
11 McKeithen ever ask him, are you Allen Douglas  
12 Hale?

13 A. No, not that I'm aware of. I don't  
14 recall it.

15 Q. Can you describe for me or define  
16 "active resistance"? That's been the term that's  
17 been utilized by I believe yourself and other  
18 officers in describing Mr. Hale's behavior.

19 A. He was not following task direction even  
20 though we had weapons, that be guns, tasers or  
21 whatever, pointed at him. He refused to follow  
22 task direction even though we gave him  
23 consequences.

24 Q. What's the difference between active  
25 resistance and passive resistance?

1                   A. Not following -- physically not  
2                   complying; and passively not complying is, like,  
3                   passively somebody won't get up when we tell them  
4                   to. He was kind of in between a passive and an  
5                   active the way he was initially acting.

6                   Q. So he wasn't all the way into full  
7                   active resistance?

8                   A. He went there eventually.

9                   Q. Okay. Well, this all happened really  
10                   quickly; right?

11                   A. Yes.

12                   Q. Okay. So at what point in time did he  
13                   pass the passive resistance continuing into the  
14                   active resistance realm?

15                   A. The active resistance started when he  
16                   made that first reach, you know, with guns pointed  
17                   at him telling him to come here, making that  
18                   further reach -- not further, but that sudden  
19                   reach out of our sight. That's when I feel that  
20                   my life was potentially in danger.

21                   Q. Did you ever tell any of the  
22                   investigators that you thought your life was in  
23                   danger?

24                   A. I don't recall.

25                   Q. I mean, wouldn't that be something that

1 would be the first thing you'd tell them, if you  
2 felt like your life was in danger?

3 MR. ROS: Objection. Argumentative.

4 A. I react to what I see; and if I'm  
5 reacting, it's based on trying to protect myself.

6 BY MR. HOLDER:

7 Q. Would you agree that you told the  
8 investigator in an interview that you tased him  
9 because he was being non-compliant and not because  
10 you feared for your safety?

11 A. To me, that's kind of both. I was  
12 trying to address the situation.

13 Q. Well, would you agree that you told him  
14 that you tased him because he was non-compliant  
15 and never mentioned that you feared for, you know,  
16 your life or serious bodily harm?

17 A. Well, I certainly said that, that I  
18 tased him for being non-compliant.

19 Q. And would you agree that in your  
20 policies and procedures -- if you want to, you can  
21 turn to Page 4 in Exhibit 4 there -- in  
22 Paragraph 3, active resistance behavior, and it  
23 gives examples, fighting, struggling, or  
24 attempting to flee, so would that be accurate?

25 A. So you're just asking about Number 4?

1           Q.    Paragraph 3, when it's talking about  
2 active resistance behavior and it provides kind of  
3 a definition or examples of that type of behavior,  
4 can you tell me what it says?

5           A.    It says, if suspects demonstrate  
6 active-resistant behavior such as fighting,  
7 struggling, attempting to flee, officer may use  
8 reasonable force to complete the arrest. However,  
9 officers are reminded that the force used to  
10 apprehend a suspect should be adjusted accordingly  
11 after the arrestee has been subdued and/or  
12 handcuffed.

13           Q.    And did Mr. Hale ever attempt to fight?

14           A.    Not directly, no.

15           Q.    Did he ever tell you he was going to  
16 fight?

17           A.    No.

18           Q.    Were y'all ever struggling? Was there a  
19 physical struggle?

20           A.    No.

21           Q.    Did he attempt to run?

22           A.    No.

23           Q.    Or any other type of escape?

24           A.    To me, he was evaluating his options.

25           Q.    He wasn't just getting a cigarette?

1 A. No.

2 Q. He told you he was going to get a  
3 cigarette; right?

4 A. Yes.

5 Q. And that's exactly what he did, didn't  
6 he?

7 MR. ROS: Object to the form of the  
8 question. It's argumentative and leaving out  
9 facts.

10 MR. GUNN: Just ask questions.

11 MR. HOLDER: I am asking a question.

12 MR. GUNN: That wasn't a question. That  
13 wasn't a question.

14 MR. HOLDER: It was a question.

15 MR. GUNN: No, it was not. It was not a  
16 question. That's an argumentative statement.  
17 Ask him a question.

18 MR. HOLDER: Don't talk to me like that.

19 BY MR. HOLDER:

20 Q. Did Mr. Hale tell you that he was going  
21 to get cigarettes or getting a cigarette?

22 MR. GUNN: Thank you.

23 A. After he grabbed the initial pack of  
24 cigarettes.

25 BY MR. HOLDER:

1 Q. And did he grab a cigarette?

2 A. I don't know.

3 Q. You don't remember if he had a  
4 cigarette?

5 A. I don't know.

6 Q. What exactly were you looking at when  
7 this was going on?

8 A. Him not following hard task.

9 Q. Did you ever see a cigarette in his  
10 mouth or left hand?

11 A. No.

12 Q. So you weren't looking at his left hand?

13 A. I was looking for weapons.

14 Q. Did you ever see a bulge in his pocket?

15 A. No.

16 Q. When you tased him, you know, what was  
17 he doing? At the instant you pulled the trigger  
18 or deployed your taser, what was he doing?

19 A. Reaching down towards his waistband.

20 Q. He didn't put his hand in his right  
21 pocket?

22 A. I just saw him reaching towards his  
23 waistband.

24 Q. You watched the video, you said; right?

25 A. Yes.

1           Q. And wouldn't you agree that it's pretty  
2 clear that he had his hand in his right pocket?

3           A. I don't recall that part. I just  
4 saw -- I reacted to tasing because he made that  
5 movement down real fast.

6           Q. When you say "real fast," I mean, can  
7 you describe that for me?

8           A. It looked like a very quick movement  
9 towards his waistband in order to go after a  
10 weapon, and that's when I felt like my life was in  
11 danger.

12          Q. And did he tell you that he was going to  
13 get a lighter?

14          A. I don't recall.

15          Q. You don't remember that, either?

16          A. No.

17          Q. Would that have made any difference to  
18 you?

19          A. No.

20          Q. How far away was he?

21          A. Probably four, five feet.

22          Q. How far does that taser shoot?

23          A. Twenty-five feet.

24          Q. Okay. So this isn't going to be real  
25 clear for the record, but I'm just trying to get a

1 inform every suspect that they're under arrest, do  
2 you check yes, or do you check no?

3 A. Well, I check yes. And this is the way  
4 this happens. If I have a warrant for your  
5 arrest, I walk up to you; I take control of you  
6 and tell you you're under arrest. I don't come up  
7 there and say, sir, you're under arrest, and give  
8 you an opportunity to resist. I take control of  
9 you first. It's all a fluent motion.

10 Q. By "take control," you would handcuff  
11 me?

12 A. I would take control of you physically  
13 and then handcuff you so I can get my hands on you  
14 so that I don't have to chase you down or  
15 something to that effect. So, yes, everything you  
16 say is correct, but it's kind of a fluent,  
17 all-in-one motion situation.

18 Q. Did you have a body camera on that  
19 evening?

20 A. I did.

21 Q. Was it turned on?

22 A. No.

23 Q. Do you remember if you turned it on  
24 after the incident?

25 A. I did.

1           Q. If you closed your eyes and deployed  
2 your taser, would you know exactly what it was?

3           A. Yeah.

4           Q. And during your taser training, do they  
5 instruct you to give any type of advance notice  
6 prior to discharging or deploying your taser?

7           A. Yes.

8           Q. Can you describe that for me?

9           A. You're supposed to give the suspect  
10 advance warning, you know, of the consequences; if  
11 they don't comply, we're going to tase you. If  
12 you decide to tase, you give a warning, "taser  
13 taser, taser," to let everybody know.

14           Q. And did you give that warning here?

15           A. I did not have an opportunity to.

16           Q. Do you know if he was tased first or  
17 shot first?

18           A. It was pretty much simultaneously, so I  
19 don't know the exact.

20           Q. All right. Now, after he was tased and  
21 shot, can you tell me what happened next? Were  
22 you involved in removing Mr. Hale from the  
23 trailer?

24           A. Sergeant Garner removed Mr. Hale and got  
25 him on the ground and got him handcuffed, and then

1 communicate. And I would have testified before I  
2 saw the video that I said it, but I did not say  
3 it.

4 Q. Have you ever been convicted of a  
5 felony?

6 A. No.

7 Q. Misdemeanor?

8 A. No.

9 Q. Have you ever been suspended or placed  
10 on probation by the Biloxi Police Department?

11 A. Probation, but that's all for minor  
12 crashes.

13 Q. Vehicle accident?

14 A. Yes.

15 Q. Damaging City property?

16 A. Yes.

17 MR. GUNN: Running over a pothole?

18 THE WITNESS: Yes.

19 BY MR. HOLDER:

20 Q. Any citizen complaints against you in  
21 the last five years or so?

22 A. I'm sure there are. Not that I'm  
23 specifically aware of. Some of them make it all  
24 the way up. Some of them don't.

25 Q. Have you ever discharged your firearm at

1 a suspect?

2 A. No.

3 Q. Did you have video on your patrol  
4 vehicle?

5 A. No. It was a back-up unit. It was  
6 non-operable. I said "non-operable." It was  
7 non-existent. Excuse me.

8 Q. There was just no video in that car at  
9 all?

10 A. Correct. It was an old Crown Vic,  
11 back-up K-9 unit.

12 Q. Your interview with Investigator Brown,  
13 was that your first interview?

14 A. Yes.

15 Q. Do you recall exactly when that was?  
16 Was it the next day?

17 A. Yes, next day. I don't want to give a  
18 time on it, but it was early. I don't know what  
19 time. Sorry.

20 Q. Had you ever seen Mr. Hale prior to  
21 April 1st, 2015?

22 A. No, not that I'm aware of.

23 Q. Have you seen him, that you're aware of,  
24 subsequent to April 1st, 2015?

25 A. No.